(1)

Supreme Court, U.S.
FILED

No. 01-788 MAY 24 2001

IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

CHARLES DORSETT

Petitioner,

v.

LOUISIANA TECH UNIVERSITY,
RICHARD GREECHIE, BARRY KURTZ,
BARRY BENEDICT, KENNETH REA
DANIEL RENEAU, LESLIE
GUICE, EUGENE CALLENS, AND
RUTH ELLEN HANNA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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52 pp

QUESTIONS PRESENTED

1. Does a governmental employee working in the area of education have any protection from the First Amendment of the United States Constitution or 42 U. S. C. section 1983?

2. Should a citizen of the United States be bankrupted and forever retaliated against for filing a meritorious suit in Federal Court?

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The petitioner respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported. Within a memorandum to counsel or parties listed below from the United States Court of Appeals for the Fifth Circuit dated February 28, 2002, plaintiff was informed: "The judgment entered provides that plaintiff – appellant pay to defendants – appellees the cost on appeal."

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 28, 2002. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This civil action was brought to redress plaintiff's: 1) deprivation of his First Amendment Rights, 2) deprivation of his legal rights to file a lawsuit opposing defendants' discriminatory employment practices and denial of his First Amendment Rights to speech and press pursuant to 42 U. S. C. section 1983 – Adverse Employment Decision for Exercise of First Amendment Rights, 3) harm resulting from the concealment of punitive and illegal acts of employment discrimination, 4) denial of his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution, and 5) defamation of character.

STATEMENT OF THE CASE

Within a NOTICE OF SETTING MOTION(S) from the United States District Court Western District Of Louisiana in Shreveport, Louisiana dated July 16, 2001, plaintiff was notified that the defendants had filed a motion for summary judgment on July 13, 2001. The Court set deadline for the defendants to file for summary judgment was September 9, 2001. Plaintiff objected that the motion for summary

judgment was untimely, but the District Court ruled against him.

Within their motion for summary judgment, the defendants used plaintiff's previous suit as a president. The 181 exhibits within plaintiff's opposition to the motion for summary judgment, many of which contained multiple documents, documented that his previous suit was not a president for the current suit. Plaintiff also documented many crucial, erroneous statements given by the defendants. In plaintiff's previous suit, he had questioned the violation of the Louisiana Tech University ("Tech") Department of Mathematics and Statistics ("mathematics") Summer Rotation System. In the current suit, plaintiff questioned violations of State and Federal laws and exercised his freedom of speech and press to serve as a private citizen budgetary editor of the public forum publication the Communitas. In plaintiff's previous case, both the District Court and the Fifth Circuit Court of Appeals used the standard established under 42 U. S. C. section 1983. First, the district judge, using his judicial discretion, ruled that since plaintiff's exercised speech was the questioning of a departmental policy, plaintiff's speech was not of public concern and thus not protected under the First Amendment. Secondly, since plaintiff's other claims were premised on the alleged denial of his First Amendment rights, they must also fail. However, within the published report on plaintiff's previous suit, the Fifth Circuit judges wrote: "Communications thus rises to the level of public concern if a person speaks primarily as a citizen rather than an employee. See id. ; Thompson v. City of Starkville, 901 F.2d 456, 461 (5th Cir. 1990)." Had the defendants' properly consulted plaintiff's previous suit, they would have known they had no basis for requesting summary judgment on plaintiff's First Amendment claims. There were other major differences as well.

Within the previous suit, the controversy concerning the defendants' use of student-teacher

evaluations to destroy academic standards involved three mathematics professors. However, the controversy had grown not only to include Tech, but, also, had become a National issue. Unlike the previous suit, at the beginning of the Fall quarter 1995, Tech President Daniel Reneau publicly acknowledged that his priorities, practices, and money management had created much mistrust and questioning of purpose at Tech. As a result efficient production of the public service for which Tech was charged was adversely affected. According to President Reneau, the situation was critical and required immediate attention. Unlike the previous suit plaintiff had, as a concerned private citizen, repeatedly communicated with State officials, news organizations, State auditors, and Tech's accrediting association the Southern Association of Colleges and Schools ("SACS") his public interest concerns. Also, unlike the previous suit, within the current suit, retaliation against plaintiff was documented to be based on plaintiff's exercise of his First Amendment rights of speech and press. Even so, District Court Magistrate Judge Karen Hayes, within her Report and Ruling, used plaintiff's previous suit as a president in the current suit and produced the following argument to deny plaintiff's claim of First Amendment violations.

> "In order for plaintiff to prevail on his First Amendment claim, he must show that his alleged damages rise to the level of a constitutional deprivation. In the absence of a constitutional deprivation, the remainder of the facts at issue herein are immaterial. Plaintiff in this matter is a tenured professor at Louisiana Tech University. It is undisputed that he has not been fired or demoted, and that his salary has not been cut, and that he has in fact received regular cost of living salary adjustments. His claims of damage include denial of merit raises, summer employment, and overloads. However, as was decided in the

previous case brought by this same plaintiff, and affirmed by Fifth Circuit, plaintiff has no constitutional right to merit raises, summer employment, or overloads. Thus, looking at the facts of this case in the light most favorable to the plaintiff, there has been no constitutional deprivation, and the plaintiff cannot prevail on these claims.

In Dorsett v. Board of Trustees for State Colleges and Universities, 940 F.2d 121 (5th Cir. 1991), the plaintiff's prior suit, the court noted that "the continuing retaliatory actions alleged by Dorsett appear to be nothing more than decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures. We recognize that such decisions might seem extremely significant to Dorsett, who has devoted his life to teaching. But we believe, nevertheless, that the alleged harms suffered by Dorsett do not rise to the level of a constitutional deprivation." Id. at 123. The claims of harm alleged by Dorsett in the present suit are virtually identical to those he brought in his prior suit. There has been no constitutional deprivation, and it is therefore recommended that his claims under the First Amendment be dismissed with prejudice."

Within her Report And Recommendation Magistrate Judge Hayes abandoned the standard set in plaintiff's previous suit and 42 U. S. C. section 1983 by improperly using the punishment rather than the speech as the standard for determining if there is a First Amendment violation. According to Magistrate Judge Hayes' ruling, for governmental employees in the area of education, the First Amendment has nothing to do with speech, only the punitive actions taken by the defendants. Magistrate Judge Hayes' argument could have been applied to only one of the punitive actions with exactly the same conclusion.

Thus, according to Magistrate Judge Hayes, all a governmental administrator in the area of education needs to do to have total immunity from the First Amendment is to punish his employees by denying them a raise, or summer employment, or an overload. As proven below, Magistrate Judge Hayes' above ruling is equivalent logically and legally to no protection for a governmental employee within education from the First Amendment of the United States Constitution. The method of proof is a well-known, often used mathematical proof by contradiction.

THEOREM. Magistrate Judges' ruling is correct if and only if a governmental employee in the area of education has no protection from the First Amendment of the United States Constitution.

PROOF: Suppose Magistrate Judge Hayes' ruling is correct. Suppose that a governmental employee plaintiff in the area of education has protection from the First Amendment and that the administration has violated the First Amendment rights. The administration, wishing to maximize the punishment of the plaintiff, adds every possible punishment, including, if necessary, denied raises, denied summer employment, and denied overloads. Since the administration had earlier violated plaintiff's First Amendment rights, plaintiff continues to have First Amendment protection. However, since the punitive actions now include all of denied raises, denied summer employment, and denied overloads, then by Magistrate Hayes' ruling, plaintiff has no First Amendment protection, which is a contradiction. Thus the assumption that a governmental employee in the area of education has protection from the First Amendment is false and a governmental employee within education has no protection from the First Amendment.

Conversely, if a governmental employee within the area of education has no protection from the First Amendment, then it makes do difference what punitive

actions are taken against the employee and Magistrate Judge Hayes' ruling is correct.

Thus Magistrate Judge Hayes has vetoed the First Amendment within the United States Constitution and 42 U. S. C. section 1983 with her ruling.

At no time in this suit was there any mention of cost of living adjustments to plaintiff. Plaintiff's last cost of living adjustment occurred in 1991. Likewise, Magistrate Judge Hayes' statement that plaintiff's salary has not been cut is erroneous.

The deciding factor in plaintiff 's decision to return to Tech in 1982 was the Departmental Summer Rotation System. Except for summer 1986, which was included within his first suit, plaintiff had half-time summer employment up to summer 1997. With the loss of half-time summer teaching and no raise since 1996, when plaintiff received the smallest raise mandated by H.B.NO. 1, plaintiff's Tech salary has been cut. For 1998-1999 plaintiff's Tech salary was $49,475.86, but for each year 1999-2000 through 2001-2002 his Tech salary was $43,092. Using a conservative estimate, plaintiff's financial damages as a result of the retaliation against him included in this suit is approximately $100,000 not including loss of retirement income. Likewise Magistrate Judge Hayes' other statement are erroneous.

Because of plaintiff's past in-depth budgetary work and Communitas' desire to expand its reporting, plaintiff became the private citizen budgetary editor of the public forum publication the Communitas during the Spring -Summer 1995. Communitas was widely circulated both on campus and off. Plaintiff's first input into the Communitas concerned the forced takeover of Tech's mathematics, chemistry, and physics departments by engineering. After the article was published, plaintiff's Department Head Dr. Richard Greechie asked plaintiff to meet with him and in a threatening manner told plaintiff that engineering was in control of mathematics and he had better keep

his mouth shut. Because of his commitment to Communitas, plaintiff moved forward with his assignments. In order to report the facts in the controversy over President Reneau's A. T. Prescott Professorship of Biomedical Engineering and gifts given Mrs. Reneau through Tech to Communitas' interested readers, plaintiff made an open records request to Tech's Comptroller Joseph Thomas. As in 1991 and 1992, when plaintiff made several open records requests to Mr. Thomas, Mr. Thomas not only exhibited sensitivity to plaintiff's request, but also, in violation of the Louisiana Open Records law, refused to provide the information.

During his work in 1992, plaintiff discovered raises within Tech's budgets that could only be detected by comparing two consecutive budgets line by line, which he labeled hidden raises. Hidden raises had continued and plaintiff, as budgetary editor of the Communitas, made an open records request to Mr. Thomas to determine if the hidden raises were legitimate mid-year adjustments. Mr. Thomas continued to exhibit sensitivity, but this time he told plaintiff there was no budgetary instrument at Tech that would give mid-year adjustments and every hidden raise within Tech budgets was a mid-year adjustment. The only way to determine a mid-year adjustment was to do a line by line search and then give the findings to him to determine the approval date and effective date, using other records. Both Vice-President Rea's office and President Reneau supported what Mr. Thomas had stated. However, President Reneau's hidden raise in the 1995 budget was not a mid-year adjustment. Thus a conspiracy to hide the truth from Communitas and its readers concerning the expenditure of taxpayers' money was revealed. Hence, by Conaway v. Smith, plaintiff's speech was given greater public importance: ("Speech which discloses any evidence of corruption, impropriety, or other malfeasance on the part of --- officials, in the form of content, clearly concerns matter of public import.").

Of the hundreds of interested inspectors of Tech's 1995-1996 budgets, only plaintiff discovered a hidden new administrative position. President Reneau, for the first time, added his long-time, personally handpicked representative President of the Grievance Committee to the administrative ranks with an additional salary of $17,400. Plaintiff made the Tech Senate aware of the hidden new position, which created much concern and discussion. Even before the new administrative position, the expected outcome of a grievance filed with the Grievance Committee was denial of a hearing. As justification for his action, President Reneau told the Senate that the new position was added to allow summer grievances before using his presidential powers to end all discussion. However, President Reneau did not rewrite the grievance process within the Handbook and Tech faculty members continued to be denied summer grievances.

Within the October 1995 issue of Communitas where the information above was reported, plaintiff's work revealed that with the expenditure of $1,016,461 for salary increases for 1995-1996 only 18 of the 255 faculty below the SREB were brought up to or above that average. At the same time, $252,676 was used to raise salaries of President Reneau's select few whose salaries were already above the SREB. Thus, unlike what President Reneau told the faculty, he continued to manage Tech in the same manner that had destroyed trust and created questioning of purpose. Immediately after the October 1995 issue of Communitas was distributed, Dr. Greechie again ordered plaintiff to meet with him where he repeatedly stated in a threatening manner the dissatisfaction of himself and the other defendants with plaintiff's private citizen Communitas budgetary work.

Tech's public service includes responding to open records requests. Plaintiff's Communitas inquiries involved two memorandums to Mr. Thomas, three short meetings with Mr. Thomas, and a telephone call to the Vice-President's office. Thus

plaintiff's speech in no way adversely affected the public service for which Tech was charged.

On September 25, 1995 plaintiff received two threatening memorandums from President Reneau concerning his two open records Communitas requests. Under color of law President Reneau used his administrative power over plaintiff to terrorize plaintiff in an attempt to silence Communitas and deny the public knowledge about their business and the expenditure of their money. The statements in both memorandums were false. To make his actions more threatening, President Reneau made numerous unprivileged publications of each memorandum. As a result of his actions, President Reneau forever denied Communitas the facts concerning his professorship, gifts for his wife through Tech, and the truth concerning his use of taxpayers' money in the hidden raises forever depriving the public facts about their business. Included within one of President Reneau's memorandums was the charge that the public's business was his personal and private business. As a result of President Reneau's actions, plaintiff continued to function as budgetary editor of Communitas, but Anne Griffin replaced him as the point editor, which proved to be detrimental to her.

The Communitas began publication in September 1993. Not until Communitas moved forward with in-depth budgetary questions did President Reneau retaliate against a Communitas editor. As a result of continued in-depth budgetary reporting in Communitas and questioning of illegal actions, under color of law, plaintiff's Department Head Dr. Greechie used the annual evaluation to continue retaliations against plaintiff.

On August 26, 1996, plaintiff asked Dr. Barry Kurtz, the reported College of Engineering and Science (COES) Director of Mathematics, why he had not received a merit raise. Dr. Kurtz told plaintiff he was not even considered for a merit raise because of three letters in his personnel file. Upon request, Dr. Kurtz

gave plaintiff a copy of a May 3, 1996 and a May 13, 1996 memorandum written by Dr. Greechie and reportedly used, but refused to produce the reportedly used letter written by President Reneau. Thus plaintiff discovered for the first time he had been charged and convicted by the defendants without even being informed of any charges. Thus, as a tenured professor with a property right, by Cleveland Board of Education v. Loudermill, plaintiff's procedural due process was violated:

> "A tenured employee who has a property right in his job is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story.".

To defend the defendants in this suit against plaintiff's due process claims, both the defendants and Magistrate Judge Hayes used only their statement that plaintiff's due process was not violated because he had not been denied procedural due process. Thus, another erroneous decision by the District Court and supported by the Fifth Circuit Court of Appeals is revealed.

According to Dr. Kurtz, plaintiff alone was denied the consideration of a merit raise and no effort was made to see if the charges were truthful. Dr. Kurtz knew the mathematics secretary, who was easily accessible to him, would know the details concerning Dr. Greechie's May 13, 1996 memorandum, but he asked her nothing. When plaintiff asked her if she made any complaint related to the May 13, 1996 memorandum, she said no, that everything had gone as planned. In depositions, Dr. Lloyd Halliburton verified that nothing within Dr. Greechie's May 13 1996 memorandum was accurate.

Long after the deadline in the Handbook, on May 2, 1996, plaintiff requested a copy of his annual evaluation in case he needed to make a response. On May 13, 1996 plaintiff saw Dr. Greechie several times, but he did not indicate any concerns. Just before

leaving Tech for Texas on May 13,1996, plaintiff checked his mathematics mailbox but nothing was in it, including the requested annual evaluation.

Dr. Greechie and President Reneau had not followed the required procedures in the Handbook for placing anything negative in plaintiff's personnel file. Plaintiff went to the mathematics office and documented with a numbered, last page, initialed copy of his personnel file by the secretary that neither of Dr. Greechie's memorandums and nothing from President Reneau was in his personnel file. The defendants had used an unknown, unavailable file on plaintiff to harm him, which plaintiff labeled a secret personnel file. Dr. Greechie had denied plaintiff the requested opportunity to make a response to his annual evaluation and created a totally false May 13, 1996 memorandum, both of which were placed in a secret personnel file to be used by the defendants to harm plaintiff. President Reneau had placed some unknown letter in the secret personnel file, which was used by the defendants to harm plaintiff. Thus by Newman v. Bargin, the defendants repeatedly violated plaintiff's procedural due process:

> ("The court held that even if a university deviates from its procedures, it is not subject to a procedural due process attack so long as the procedures the university actually follows are fair ones.").

Plaintiff established the secret personnel file with the District Court by producing it in his first motion to compel.

By McConathy v. Unger, Dr. Greechie's May 13, 1996 memorandum defamed plaintiff:

> ("A statement is defamatory if it is false and tends to expose a person to contempt, hatred, ridicule, or obloquy, causes a person to be shunned or avoided, has a tendency to deprive him of the benefit of public confidence, or injures him in his occupation.").

In addition, Dr. Greechie created a totally false May 13, 1996 memorandum against plaintiff, he improperly published it in a secret personnel file to the unprivileged third parties Dr. Kurtz and Dean Benedict, he alone was at fault for the unprivileged publication, and plaintiff was injured. Thus by Louisiana Article 2315 and McConathy v. Ungar Dr. Greechie defamed plaintiff exposing yet another erroneous ruling by Magistrate Judge Hayes.

The defendants were confronted with a dilemma. In order for them to use the memorandums to harm plaintiff, plaintiff needed to see them, but not alarmed to make a response. As a result, Dr. Greechie sent plaintiff a certified package with return in late May 1996 to Texas which contained a request for research papers, the two memorandums, and a handwritten letter telling plaintiff he could wait until returning to Tech to deal with the memorandums.

In a September 3, 1996 memorandum to plaintiff, Dr. Kurtz disputed much of what he had earlier said and required plaintiff to file a grievance if he wanted to further discuss his denial of a merit raise. However, such an action is described as the antithesis of academic freedom within Tech's Handbook:

> ("Institutions of higher education are committed to the solution of problems and controversies by the method of rational discussion. Acts of physical force or disruptive acts which interfere with university activities, freedom of movement on campus, or freedom for students to pursue their studies are the antithesis of academic freedom and responsibility as are acts that, in effect, deny freedom of speech, freedom to be heard, and freedom to pursue research of one's own choosing to members of the academic community or to invited visitors to that Community.").

The reported evaluation by Engineering had never before been used and included never before used time limits and criteria. Academic freedom had been abandoned in an attempt to silence plaintiff as to even the charges against him. Thus, by Newman v. Bargin, plaintiff's procedural due process was further violated.

Within the Fall 1996 general faculty meeting, President Reneau told the faculty, staff, and public that the money made available for raises by H.B.NO. 1 had been used to bring Tech faculty on the average to or above the Southern Regional Education Board ("SREB") averages by both rank and discipline for division III universities with special emphasis on faculty in disciplines with long neglected salaries. Plaintiff was a 15 year member of the long recognized salary neglected mathematics department whose 1995 salary was $5403 below the targeted Tech SREB average for professors for 1989-1990. In a September 15, 1996 Ruston Daily Leader article, it was reported: "The raises were designed to boost salaries to as close to the southern region as possible." In the same article, it was reported that: "Marvin Roubique, vice commissioner for finance, said the few individuals who received the minimum raise were new hires or already had salaries close to the regional average." Thus the actions against plaintiff were contrary to what Dr. Reneau had stated and the intent of H.B.NO. 1.

According to Engineering Dean Barry Benedict, raises were based on grade distributions and student-teacher evaluations for the last three years and SREB averages by rank and discipline for division three universities. Grade distributions had never before been used as a criteria in mathematics. According to Dean Benedict, a grade distribution with 40% or more Ws, Ds, or Fs was proof of poor quality teaching. In order to report the SREB averages to Communitas readers, plaintiff asked for the information and was told by Dean Benedict that the SREB averages would be send by email to the faculty. When Dean Benedict did not respond in a timely manner, plaintiff contacted

President Reneau's office to obtain all the SREB averages by rank and discipline for the Communitas readers. Exhibiting great sensitivity, President Reneau's administrative assistant told plaintiff that SREB averages were not available by discipline and that the numbers used were internally generated at Tech. Thus another impropriety was revealed further making plaintiff's speech of public importance by Conaway v. Smith. In violation of the open records law, plaintiff was repeatedly denied the internally generated numbers and the true SREB averages. Eventually plaintiff obtained the information from the president of the Tech Senate. Even after such an effort, plaintiff's request did not adversely affect the public service for which Tech is charged.

Unlike what President Reneau had reported to the Tech faculty and public, Tech faculty members were not raised to or above the SREB averages on the average. As reported in the information, on average Tech professors were $1451 below, associate professors were $1323 above, assistant professors were $593 above, instructors were $123 below, and all faculty were $22 above the targeted SREB averages. Instead of using the 1995-1996 budget to determine eligibility for raises as required by H.B.NO. 1, President Reneau used the 1994-1995 budget. Thus President Reneau had intentionally deceived both the Tech faculty and the public.

As a result of plaintiff's work, within the Spring 1997 issue of Communitas the true facts were revealed to the public. For 1996-1997, on the average Tech professors were $3936 below, associate professors were $311 below, assistant professors were $1481 below, instructors were $2026 below, and all faculty were $2107 below the targeted SREB averages. Also, as reported in the same issue of Communitas, more than 60 unfilled positions had been eliminated in the 1995-1996 budget. By improperly using the 1994-1995 budget to determine eligibility, (a) at least 14 ineligible employees were awarded raises totaling

$31,937, and (b) $86,540 was allotted to unfilled positions which were restored for the 1996-1997.

On the last day of the fiscal year, the $86.540 was transferred to some unknown account where it was already used forever subverting the intended use of H.B.NO.1 money. Within discovery plaintiff obtained two additional and different sets of average salaries for 1996-1997 involving a difference of great amounts of taxpayer money. Thus plaintiff's speech repeatedly exposed improprieties by the defendants, which by Conaway v. Smith further made plaintiff's speech of public importance. In addition, the evaluation process used by engineering was different than the one given with the SREB averages.

In mathematics meetings during 1997-1998 then Mathematics Director Eugene Callens repeatedly told the faculty that during his 1993-1994 presidency of the Tech Senate, the Senate documented that academic standards were being compromised by the faculty as a result of Tech administrative use of student-teacher evaluations and that when he discovered that President Reneau knew and approved the compromise, the Senate was silenced. President Reneau's only response was to extend the use of student-teacher evaluations as documented by the Senate. Also, according to Dr. Callens, mechanical engineering had increased their student-teacher evaluation on average by .8 of a point by giving a course evaluation immediately before the student-teacher evaluation. Thus during the summer 1996, engineering knew the Tech student-teacher evaluation was an invalid measure of teaching, that its use was destroying academic standards at Tech, and that engineering had an unfair advantage through experimentation over mathematics and science faculty.

Within the mathematics faculty meeting, Dr. Kurtz told the faculty that only question 15 responses from the student-teacher evaluations were used in the evaluation. However, Tech officials had earlier acknowledged question 15 as an invalid measure of

teaching. Engineering knowingly used an invalid measure of teaching from an instrument whose use was known to compromise academic standards.

On September 4, 1996, Dean Benedict sent his email concerning SREB averages. After learning plaintiff had discovered the truth, on September 12, Dean Benedict sent an email acknowledging the earlier reported SREB averages were erroneous. Plaintiff's 1995-1996 salary was $18,354 below the targeted SREB average for his rank of professor. As discovered later, plaintiff's teaching was reportedly evaluated using only his student-teacher evaluation number, and the other faculty member with the same student-teacher evaluation number as plaintiff was given a $7842 merit raise, $5490 of which was in the teaching budget. In addition, plaintiff had a very productive year at Tech for 1995-1996 in all areas including 5 published research papers and another one accepted. Had the defendants used any of the Handbook evaluation, or the criteria given in H.B.NO. 1, or the reported evaluation by engineering, plaintiff would have received a substantial merit raise for 1996-1997. However, on September 17, 1996, Dean Benedict emailed a second evaluation process that he then claimed to have been used to determine raises for 1996-1997. To teaching, research, and service, he added a never before known and never since used quantity, which he called "value."

As a result of Dr. Griffin becoming the point editor of Communitas and the many disclosures by Communitas, she received two brutal letters from President Reneau. Dr. Griffin, as a long time tenured faculty member, was even threatened with non-renewal of her contract. Even though the threat was addressed to Dr. Griffin, it was intended for all the editors of Communitas. As in the case of plaintiff, Dr. Griffin received no merit raise for 1996-1997. However, in a memorandum from her dean dated September 11, 1996, Dr. Griffin was told: "Your department head recommended a merit raise of $1805. I forwarded that

recommendation to the Academic Vice-President without change."

On September 18, 1996, in a meeting between President Reneau, Vice-President Rea, and the Tech chapter of the American Association of University Professors, Dr. Rea acknowledged he had vetoed Dr. Griffin's recommended merit raise on the basis of his judgment. In response to questions concerning Dr. Griffin's two letters of reprimand, President Reneau stated: "It was the first one like that he had written, but he had no choice." President Reneau also shared his opinion of Communitas: "Communitas was full of innuendos and personal attacks. That they had the right to print it, but he felt it was degrading to Louisiana Tech and he didn't want to be a part of it." Within the new evaluation "value" given in Dean Benedicts in his second announced evaluation, collegiality was to be used. At the request of plaintiff, President Reneau gave Tech's administrative definition of collegiality: "Collegiality means the ability to cooperate within the working environment and with elements of leadership." Thus at Tech anyone not fully cooperating with Tech administrators was anti-collegiate.

To ask for help editors of Communitas as private citizens, including plaintiff, met with Louisiana Representative Charles McDonald. Representative McDonald became angry that H.B.NO. 1 money had not been spent at Tech as intended, but his only remedy for the editors was to meet with the Louisiana Senate Education Committee that was holding a public meeting in Monroe that afternoon. As a result of attending the public meeting, there was an article entitled "Tech professors seek inquiry into raises" in the Monroe News Star World. As indicated in the article, President Reneau refused to discuss the raised issues. Instead he so defamed the Communitas editors that the News Star World was silenced and the defendants continued their retaliation of plaintiff. Hence, once again by McConathy v. Ungar and

Louisiana Article 2315 plaintiff was defamed by the defendants. The defendants' defense for this defamation was that President Reneau had not referred to plaintiff by name within the article. What they neglected to tell was that plaintiff's name appeared in the article at least 8 times.

At the director level of the required grievance, Dr. Kurtz produced two more secret personnel file documents. One was a September 28, 1995 memorandum written by Dr. Greechie, which Dr. Greechie had told plaintiff on September 28.1995 was a private correspondence and had admitted contained false charges before declaring the entire matter a dead issue. The second secret personnel file document was the signed certified package receipt, which Dr. Kurtz claimed allowed the many violations of the Handbook. Plaintiff produced the handwritten letter from Dr. Greechie, which exposed the conspiracy. Again plaintiff was charged and found guilty without even knowing he was charged further denying plaintiff procedural due process by Cleveland Board of Education v. Loudermill. The conspiracy was further supported by documentation that plaintiff alone received his annual evaluation by certified mail.

In addition, Dr. Kurtz used an improper, long after the fact internet search, never before used criteria, and "value" to brutally assault plaintiff's career and character, which by Newman v. Bargin further violated plaintiff's procedural due process.

At the Dean's level in the grievance, plaintiff was still denied a copy of the letter written by President Reneau. In the meeting, Dean Benedict openly admitted that a secret personnel file had been used and plaintiff was encouraged to defend himself against Dr. Greechie's three memorandums. According to what Dean Benedict stated, his decision would be based entirely on who was at fault, plaintiff or Dr. Greechie, Dr. Hanna, Dr. Greechie's administrative assistant, and the mathematics secretary. As a result of documents produced by plaintiff, Dean Benedict

acknowledged not only was plaintiff not at fault, but Dr. Greechie, Dr. Hanna, and the mathematics secretary were guilty of disruptive behavior. Thus by Dean Benedicts acknowledgment, by McCanathy v. Ungar and Louisiana Article 2315, Dr. Greechie defamed plaintiff with his three memoramdums.

For 1995-1996, Dr. Greechie and Dr. Hanna had flagrantly violated the Louisiana ethics law and nepotism with the employment of Dr. Hanna's daughter in mathematics. For nepotism, it is stated:

> "The board of Trustees authorizes the employment of persons from the same economic unit or the same immediate family, although a separate economic unit, when individual qualifications are such that they represent the best possible choice for a given position; however, such employees may not be employed in a situation where one member may have direct administrative responsibilities for the other."

As documented by Dr. Greechie, Dr. Hanna was an invaluable member of the administration in charged of almost all of the day by day administrative responsibilities of the department including scheduling and administrative contact person. To do her administrative work, Dr. Hanna was given a reduced teaching load and continual summer employment. For the Fall quarter 1995, Dr. Hanna assigned her daughter her teaching schedule and, even though her daughter had no graduate hours in mathematics, which should have totally denied her employment, assigned her daughter coordinator of Math 099 in charge of other mathematics faculty. According to the Handbook plaintiff could not file a grievance, but as a private citizen concerned that laws were violated he did express concern, which led to a conspiracy as documented for Dean Benedict, by Dr. Greechie, Dean Trisler, and Dr. Hanna to conceal the violations. Sensitivity from Dr. Greechie and Dean Trisler turned to anger by Dr. Greechie. Also, during the year

plaintiff, as a concerned citizen that Dr. Greechie was violating several other laws and academic standards, which destroyed efficient production of the public service for which Tech was charged, raised questions. As in the case of nepotism, sensitivity by Dr. Greechie turned to anger. When plaintiff met with Dr. Greechie for his annual evaluation, Dr. Greechie approached plaintiff angrily charging him with being the departmental policeman. Under color of the law, Dr. Greechie's three memorandums were written to retaliate against plaintiff for his private citizen work as editor of Communitas and his public interest concerns that laws and academic standards were violated and as a result, plaintiff was denied an earned merit raise. Thus by (16) Federal Civil Procedure in Waters, et. al. v. Churchill, et. al., plaintiff's speech as a private citizen editor of Communitas and of the violations of laws and academic standards by Dr. Greechie were genuine issues of fact and unlike what Magistrate Judge Hayes stated in her ruling, there were genuine issues of fact in the case.. Also, unlike what Magistrate Judge Hayes stated, the actions against plaintiff by Dr. Greechie were not actions against plaintiff as an employee of Tech, but rather for the exercise of his constitutionally protected speech. Plaintiff met with Representative Jay McCallum during the year as a concerned citizen to inform and ask for help.

Unlike what Dean Benedict stated, by misuse of "relations with colleagues" in the Handbook and use of President Reneau's definition of collegiality, Dean Benedict continued to deny plaintiff a merit raise.

Within the second announced evaluation, Dean Benedict described complicated calculations done for each faculty member. Since plaintiff had been told nothing about his calculated numbers, he made a written request for the calculations and other open records and personnel file information. Also, contrary to what both Dr. Kurtz and Dean Benedict stated, Dr. Greechie told plaintiff he did recommend plaintiff for a merit raise and plaintiff requested to know the truth.

Dean Benedict refused to give almost all the requested information again denying plaintiff procedural due process by Cleveland Board of Education v. Loudermill.

At the Vice-President level of the grievance, Dr. Rea knew plaintiff had been cleared of all charges for which he could make a response. The only charge still hanging over plaintiff was some unknown letter written by President Reneau, which Dr. Rea refused to discuss, again violating plaintiff's procedural due process as above. Within the meeting with Dr. Rea, Dr. Rea ordered Dean Benedict to provide plaintiff the remaining requested information. Dean Benedict announced he could not produce the requested calculations because they did not exist. Thus, the second announced evaluation was revealed as a conspiracy to conceal the retaliatory actions against plaintiff. In violation of the Handbook Dr. Rea decided to give each of Dr. Kurtz and Dean Benedict another chance to respond to plaintiff's grievance. In response Dr. Kurtz angrily contradicted everything he had earlier wrote in plaintiff's grievance. For example, in his earlier response, Dr. Kurtz used the student-teacher evaluation number to judge plaintiff a bad teacher. However, in his new response, Dr. Kurtz stated: "This is not a dispute about using student evaluations to evaluate teaching performance." With respect to his misuse of "relations with colleagues" to justify his use of collegiality, Dean Benedict stated: "This does negate the use of such factors in evaluation, however." Plaintiff had received and documented to Dr. Rea that the student-teacher evaluations were used in an arbitrary and capricious manner. Dean Benedict had refused to give plaintiff the requested information about Dr. Greechie's reported recommendation. Even under such circumstances, Vice-President Rea denied plaintiff's grievance. Thus, at the Vice-President level, plaintiff was denied a merit raise based only on some letter reportedly written by President Reneau and totally

unknown by plaintiff further violating plaintiff's procedural due process as above.

The University Grievance Committee and President Reneau refused to hear plaintiff's grievance further denying plaintiff even the opportunity to know the only remaining charges against him further denying him procedural due process. Within the Court discovery process, plaintiff and the District Court were told that the two September 25, 1995 memorandums written by President Reneau were the letters used by the defendants as justification for their denial of a merit raise for plaintiff. Thus Magistrate Judge Hayes, the District Court, and the Fifth Circuit Court of Appeals knew, contrary to what Magistrate Judge Hayes wrote, Vice-President Rea's decision to deny plaintiff a merit raise at the Vice-P{resident level of the grievance had nothing to do with plaintiff's employment at Tech. It had only to do with plaintiff's constitutionally protected speech as private citizen budgetary editor of the Communitas. Thus the final standard established in 42 U. S. C. section 1983 for First Amendment protection was documented and plaintiff was wrongfully denied protection for his First Amendment claims by the District Court and the Fifth Circuit Court of Appeals. The decision was also in violation of Cahill v. O'Donell:

> ("For plaintiff to establish a prima facie case of First Amendment retaliation, he must establish that the speech could be fairly characterized as involving matters of public concern, and that the speech was at least a substantial or motivating factor in the adverse action taken by the employer.").

By (16) in Waters, et. al. v. Churchill, et. al., plaintiff's speech as private citizen editor of Communitas related to President Reneau's two memorandums was another genuine issue of fact. By Anderson v. Liberty Lobby, Inc., Magistrate Judge Hayes made another erroneous ruling: ("The requirement for summary judgment is there be no

genuine issue of fact."). By both McConathy v. Ungar and Louisiana Article 2315, President Reneau's two September 25, 1995 memorandums defamed plaintiff.

In their motion for summary judgment, as known by Magistrate Judge Hayes, the defendants falsified the facts of the case by stating that only Dr. Greechie's September 28, 1995 and May 13, 1996 memorandums were used to deny plaintiff a merit raise for 1996-1997. Within her Report And Recommendation Magistrate Judge Hayes, citing F. R. C. P. Rule 56 (c), acknowledged that she was to view the evidence in the light most favorable to the non-moving plaintiff, but instead, she rewarded the defendants for known false testimony in their motion for summary judgment. Also, as documented by the defendants in their motion for summary judgment, the evaluation done by the engineering defendants was done before receiving final approval from the required Boards, which by Conaway v. Smith made plaintiff's speech concerning the evaluation of public importance. As a result of plaintiff's constitutionally protected speech concerning the improper evaluation, the defendants further retaliated against plaintiff with unjustified denial of summer employment. In his annual evaluation, plaintiff was not only denied credit for his three published research articles, but judged a bad researcher because he had not submitted a grant proposal. As documented above, such an action is an antithesis of academic freedom. Under service, plaintiff's constitutionally protected speech concerning the improper evaluation was used to attack plaintiff's character. Thus by (16) in Waters, et. al. v. Churchill, et. al., plaintiff's speech concerning the improper evaluation gave a genuine issue of fact.

As a result of the admission by the defendants concerning President Reneau's two memorandums, and the earlier cited violations of procedural due process, plaintiff was clearly denied his liberty rights of freedom of speech and press, academic freedom, the Louisiana open records law, and accessibility of

personnel file information. Thus, by Grassinger v. Walty, plaintiff's due process was violated: ("For violation of due process he must be denied some substantively protected property or liberty right.") and another erroneous ruling by Magistrate Judge Hayes is revealed.

What could have been so bad that the defendants would have so flagrantly violated plaintiff's constitutionally and state protected rights? Based on the repeated sworn complete production of mid-year adjustments by the defendants, there were no mid-year adjustments for the years requested by plaintiff in 1995. Thus all of the hidden raises from 1990-1991 through 1995 were fraudulently requested and obtained expenditures of taxpayers' money by President Reneau adding up to at least $643,749. Within the court discovery process, Magistrate Judge Hayes and the District Court denied plaintiff the requested information concerning President Reneau's professorship and gifts to Mrs. Reneau through Tech and plaintiff and the public will forever not know precisely why he was punished for that request. The above action by Magistrate Judge Hayes and the District Court was one of many violations of F. R. E. Rule 401, 28 U. S. C. A.:

> ("Evidence is relevant if it has any tendency to make the evidence of any fact that is of consequence to the determination of the action more probable or less probable.").

Within the COES, Dr. Hanna continued her same administrative responsibilities and support as with Dr. Greechie except she was extended to 100% summer pay. Faculty Workload Surveys documented Dr. Hanna to be manager of Tech's undergraduate mathematics program. In annual evaluations signed by Dr. Callens and Dr. Hanna, Dr. Hanna alone in mathematics was responsible for scheduling and served as the administrative contact person answering all day by day questions. Dr. Hanna further violated the nepotism and ethics laws by assigning her

daughter summer employment and overloads. During 1997-1998, Dr. Callens and Dr. Hanna decided to upgrade the positions held by Dr. Hanna's daughter Krista Hines and friend Patricia Gaston to permanently budgeted positions. To accomplish their objective the college employment team was abandoned and a special employment team was set up. Equal employment opportunity laws were abandoned. Of those applicants considered, all those that applied for both the advertised instructor positions and assistant professor positions were automatically placed at the bottom of the list, which totally excluded them from consideration. Krista Hines and Patricia Gaston were recommended by the employment team knowing they were violating nepotism and without even knowing the academic credentials of either. Plaintiff met with Dr. Callens and Acting Dean Guice about the nepotism and ethics law violations. Dr. Callens exhibited sensitivity and fully supported the actions of the employment team. Dr. Guice acknowledged that the employment of Dr. Hanna's daughter for the new position would be a violation of nepotism, but when he learned Dr. Callens fully supported the employment team's actions, he exhibited sensitivity to plaintiff's concerns. Neither Dr. Callens nor Dr. Guice made any written response. For fall 1998 Dr. Hanna named her daughter coordinator of Math 099 and assigned her daughter an overload. After being recognized in the Fall mathematics faculty meeting, plaintiff asked about nepotism, but was immediately and angrily silence by Dr. Callens. After being recognized later, plaintiff expressed concern that overloads continued to be assigned in an unfair and inequitable manner to which Dr. Callens immediately and angrily silenced him. Later after being recognized, plaintiff repeated what he had been told the previous year concerning travel support in order to ask about travel support for the current year, but before plaintiff got to his question, Dr. Callens angrily interrupted him demanding to know plaintiff's source. Plaintiff shared

his source after which Dr. Callens declared the information to be false and gave what he claimed to be the truth. Dr. Greechie confirmed what Dr. Callens stated. Each time after Dr. Callens angrily silenced plaintiff, plaintiff didn't raise the issue again. The next day, plaintiff called Dr. Guice concerning the nepotism violation. Dr. Guice was extremely angry at plaintiff because he had served his first petition in this suit and refused to meet with him. There were memorandums documenting Dr. Guice's actions.

As a result of President Reneau's threatening memorandums to Dr. Griffin and himself, plaintiff had made no more public record requests at Tech. In an attempt to obtain the information for Communitas readers concerning mid-tear adjustments, plaintiff requested the information from the Board of Trustees. However, as witnessed by Board officials, President Reneau refused to comply with the opens records law again denying plaintiff the information. Plaintiff contacted State officials and all were in agreement President Reneau had violated the open records law, but none would act.

Through the Tech Senate it was revealed that mid-year adjustments were requested using a Personnel Change Form. Dr. Callens and Dr. Guice was angry at plaintiff, but, with no just cause for action, neither had taken any action against him. However, three working days after plaintiff made a Communitas open records request to President Reneau for the Personnel Change Forms, he received a letter of reprimand from Dr. Callens. These facts were so detrimental to the defendants' case that they falsified them in their motion for summary judgment. Even though plaintiff had provided the defendants a Winter 1998 issue of Communitas, the defendants told the court the request was not a Communitas request because the last issue of Communitas was Fall 1997. The District Court knew about this important falsification by the defendants, but it made no difference and F.R.C.P. Rule 56(c) was once again

abandoned. Plaintiff was falsely reprimanded because he had questioned the nepotism violation, the overload assignments, and repeated what he was told about travel expenditures the previous year.

Through open records requests plaintiff verified the nepotism violation, that Dr. Callens knew nothing about the assignments of overloads in mathematics, that the overload assignments were unfair and inequitable, and that Dr. Greechie did not know the information he stated he did. COES employee Sherry Jones told plaintiff she would have the information concerning travel expenditures to him in two days. However, Dr. Guice intervened denying plaintiff the information stating instead the information was not available. Plaintiff called Ms. Jones and verified the information was available in end of year monthly transaction ledgers, but she refused to allow plaintiff to see the open records documents. In another effort to determine the truth, plaintiff made an open records request of Dr. Callens. Dr. Callens had again reprimanded plaintiff for something he himself did not know. In violation of the open records law, Dr. Callens reprimanding plaintiff for his open records request. The important disclosure was added to plaintiff's grievance, but Dr. Guice not only refused to accept it but waited until after the deadline for filing a grievance had passed to tell plaintiff denying plaintiff the opportunity to respond to the charges against him. Plaintiff procedural due process was further denied by Cleveland Board of Education v. Loudermill. That was the beginning of many totally unjustified, closed-minded reprimands creating such stress and anxiety for plaintiff that he suffered spontaneous nose bleeds and depression requiring counseling. To try to obtain relief, plaintiff filed a motion for a protective order. By sworn testimony within the hearing, the defendants were in violation of Goff v. Continental Oil Co.:

> (" were we to protect retaliatory conduct, we would in effect be discouraging the filing of meritorious civil rights suits and sanctioning

further discrimination against those persons willing to risk their employer's vengence by filing suit.") and EEOC v. Cosnair, Inc. L'Oreal Hair Care Division:

("purpose of the anti-retaliation provision of ADEA is to protect persons who resort --- to the legal procedures in order to right congressionally recognized wrongs.").

However, instead of approving or denying plaintiff's motion, Magistrate Judge Hayes, acting as if she were counsel for the defendants, wrote a protective order for the defendants totally silencing plaintiff. As a result of discovery, plaintiff had discovered that President Reneau had even used the Personnel Change Forms to obtain fraudulent raises for his select few and had fraudulently spent in excess of $2,650,000 of taxpayers' money. Magistrate Judge Hayes' order prevented him from sharing his information with State officials. Based on the facts above, Magistrate Judge Hayes' ruling was in violation of Cahill v. O'Donell.

The defendants continued retaliation actions were immediate. Within his annual evaluation for 1999-2000, plaintiff was judged a bad teacher using personal observations by Dr. Callens, student and faculty complaints, and the grade distribution from only one of plaintiff's many classes. Plaintiff was repeatedly denied all information concerning the charges against him and even threatened with sanctions by Magistrate Judge Hayes by the defendants' counsel Mr. Henry if he continued to try to defend himself telling him he could obtain the information through discovery. Plaintiff filed a grievance on the matter. Dr. Callens did not respond to the grievance within the required time limit and plaintiff requested default judgment from Dr. Guice. Dr. Guice abandoned the grievance procedure within the Handbook and established Mr. Henry as the judge in the grievance, which totally denied plaintiff a grievance and further violated plaintiff's procedural due process by Cleveland Board of Education v.

Loudermill and Newman v. Bargin. Thus plaintiff was denied his liberty rights of First Amendment protection, academic freedom, and the open records and by Grassinger v. Walty, plaintiff's due process was violated. As a result, plaintiff filed his second amended petition in this suit.

Within discovery the defendants refused to provide the requested information. Later, they used confidentiality of complainers to try to conceal the truth. Finally, by the defendants' own admission, there were no observations and no complaints. Through discovery, it was established that plaintiff alone in an arbitrary and capricious manner was punished using grade distributions. Dr. Callens' cited student-teacher evaluation numbers were erroneous. Under research, Dr. Callens in an arbitrary and capricious manner, used an antithesis of academic freedom action by punishing plaintiff for not appling for a grant. Under service, Dr. Callens used earlier false punitive actions against plaintiff as justification for the current punitive action. As a result of Dr. Callens' totally false annual evaluation, plaintiff was denied summer employment, overloads, and a raise from available State funds, which by (16) in Waters, et. al. v. Churchill, et. al. created additional genuine issues of fact.

In less than 46 days after the defendants disclosed the facts concerning plaintiff's 1999-2000 annual evaluation, Dr. Callens produced an almost carbon copy of plaintiff's 1999-2000 evaluation for 2000-2001. When plaintiff later received his personnel files from the defendants, it was verified as before that Dr. Callens' charges were totally false. The only negative statements made against plaintiff in his personnel file were false statements made by the defendants. Defendants' counsel, knowing the facts, would not oppose plaintiff's motion to allow him to file a third amended petition, but the motion was denied by the District Court further violation Goff v. Continental Oil Co. and EEOC v. Cosmair, Inc L' Oreal Hair Care Division. As a result of Dr. Callens' punitive

annual evaluation, plaintiff was denied summer employment, overloads, and a raise from available State funds. After testimony in depositions damaging to the defendants, to punish plaintiff, the defendants removed plaintiff from the graduate faculty.

In late March of this year, Dr. Callens continued to produce almost the same punitive annual evaluation of plaintiff. Plaintiff was denied information that would reveal the truth and Dr. Callens has even admitted to plaintiff that the charges are false, but added his actions are correct because the Courts have told him they are. Dr. Callens' action made plaintiff desperately ill, but not only was plaintiff forced to work ill, but also reprimanded by Dr. Callens because he requested sick leave.

Reasons for Granting The Writ

The writ should be granted because: (1) the District Court and the Fifth Circuit Court of Appeals have vetoed the First Amendment of the United States Constitution and 42 U. S. C. section 1983, (2) plaintiff has been denied his constitutional and other legal rights, (3) as above, the defendants will badly abuse the immunity given them by the District Court and the Fifth Circuit Court of Appeals, (4) plaintiff will be bankrupted and forever retaliated against for filing a meritorious suit in the Federal Court System, and (5) other governmental employees in the area of education will be denied their First Amendment protection by the District Court and the Fifth Circuit Court of Appeals.

APPENDIX

U. S. COURT OF APPEALS
FILED
FEB 28 2002
CHARLES R. FULLBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. OI-31194
SUMMARY CALENDER

CHARLES DORSETT,
PLAINTIFF – APPELLANT,

V.

LOUISIANA TECH UNIVERSITY, ET AL.,

LOUISIANA TECH UNIVERSITY, RICHARD GREECHIE, BARRY KURTZ, KENNETH REA, DANIEL D. RENEAU, BARRY BENEDICT, LESLIE GUICE, EUGENE CALLENS, RUTH ELLEN HANNA,

DEFENDANTS – APPELLEES,

APPEAL from the United States District Court for the Western District of Louisiana Tech University (98-CV-210)

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.
PER CURIAM:*

Charles Dorsett appeals, pro se, the summary judgment awarded defendants with respect to his claim for: violation of First Amendment and due process rights; and state-law defamation. The district court, after a de novo review, adopted the Report and

APPENDIX A

Recommendation of the Magistrate Judge, concluding Dorsett had failed to establish: constitutional deprivation with respect to his First Amendment and due process claims; and various elements of a state-law defamation claim.

"We review a grant of summary judgment de novo, applying the same standards as the district court. A motion for summary judgment is properly granted if there is no genuine issue as to any material fact." **Ameristar Jet Charter, Inc. v. Signal Composites, Inc.**, 271 F.3d 626 (5th cir. 2001) (internal citations omitted). "Although we must draw all inferences in favor of the party opposing the motion, as opposing party cannot establish a genuine issue of material fact by resting on mere allegations of the pleadings. A properly supported motion for summary judgment should be granted unless the opposing party produces sufficient evidence to demonstrate that a genuine factual issue exists." **Dorsett v. Bd. Of Trs. For State Colls. & Univs.,** 940 F. 2d 121, 123 (5th Cir. 1991) (internal citations omitted).

Dorsett's initial and reply briefs constitute little more than an eighty-plus-page diatribe directed at defendants. He does not state specific points of error, other than ask for review to determine whether there is error in the final judgment. Likewise, he does next to nothing in the way of addressing the district court's reasons for granting summary judgment. Simply put, he has wholly failed to comply with the rules concerning the requirements for a brief. In any event, he has not shown that a genuine issue of material fact exists and that defendants are not entitled to judgment as a matter of law.

AFFIRMED

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*Pursuant to 5th CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set fourth in 5th CIR. R. 47.5.4.

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 25 2001
ROBERT H. SHEMWELL, CLERK
By _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Charles Dorsett	*	**CIVIL ACTION NO. 98-0210**
VERSUS	*	**JUDGE JAMES**
LOUISIANA TECH UNIVERSITY, ET AL.	*	**Magistrate Judge Hayes**

JUDGMENT

The Report and Recommendation of the Magistrate Judge having been considered, together with the written objections thereto filed with this Court , and, after a de novo review of the record, finding that the Magistrate Judge's Report and Recommendation is correct and that judgment as recommended therein is warranted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment filed by defendants (document#153) is hereby **GRANTED,** and this case is **DISMISSED** with prejudice and at plaintiff's cost.

THUS DONE AND SIGNED this 25 day of September, 2001, in Monroe, Louisiana.

"s Robert g. James"
Robert G. James
United States District Judge
Western District of Louisiana Tech University
Monroe Division

JUDGMENT ENTERED

APPENDIX B

September 25, 2001
By "s Debbie Dickerson"
COPY Locabee
Dorsett
Henry
R G J
K L H
A C

FILED
SEP 5 – 2001
Robert H. Shemwell, Clerk
Western District of Louisiana

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUIAIANA MONROE DIVISION

CHARLES DORSETT * CIVIL ACTION NO. 98-0210
VESUS * JUDGE JAMES
LOUISIANA TECH * MAGISTRATE JUDGE HAYES
UNIVERSITY, ET AL.

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a motion for summary judgment filed by defendants (Document#153). For reasons stated below, it is recommended that the motion be GRANTED.

Plaintiff filed this action on February 3, 1998, claiming violations of his due process rights and making a state claim for defamation. On July 2, 1999, plaintiff filed his first amended complaint adding additional allegations of violations of his First Amendment rights and denial of due process under the Fifth and Fourteenth Amendments. Finally, on September 22, 2000. Plaintiff filed a second amended complaint alleging additional instances of the alleged violations. Defendants moved for summary judgment arguing that (1) the alleged damages suffered by Dorsett do not rise to the level of a constitutional deprivation; (2) Dorsett is not protected the First Amendment since these matters were not of public concern; (3) Dorsett acted as an employee, not a private citizen; (4) defendants did not defame him; and (5) defendants did not conceal illegal employment actions.

In response to the motion, plaintiff filed a lengthy memorandum which consists of allegations of wrongdoing by the defendants beginning in the nineteen-eighties and continuing to the present,

allegations amounting to accusations of mismanagement, conspiracy, and political intrigue involving the university at all levels, two university presidents, Representative Roy Brun, the Board of Regents, the News Star World, the District Attorney's office, and even the Southern Association of Colleges and Schools (pp.32, 35, 37).

Plaintiff brief and supporting documents concern his own recollections of alleged conversations with various persons both in person and by telephone, with no affidavits or other competent evidence filed in support. Plaintiff fails to cite the court any legal authority whatsoever, and fails to address the defendants' legal arguments in any but the vaguest of terms. Even then, his argument appears to be aimed more at convincing the court that wrongdoing has occurred at Louisiana Tech than in proving that his own constitutional rights have been violated or that he has otherwise suffered a compensable injury.

As was pointed out by the Fifth Circuit in Dorsett's previous suit, it is not the function of the court to micro-manage the administration of this or any other of the thousands of state educational institutions nationwide, and "of all fields that the federal court should hesitate to invade and take over, education and faculty appointments at (the university) level are probably the least suited for federal court supervision." Dorsett v. Board of Trustees for State Colleges and Universities, 940 F.2d 121, 124 (5th Cir. 1991), citation omitted.

Much of the plaintiff's brief concerns challenges to the hiring and administrative practices and procedures of the university and the department for which he works, allegations which are for the most part irrelevant to the issues raised by the defendants in their motion for summary judgment, and which are immaterial to the legal grounds on which this report and recommendation turns. Recognizing that the plaintiff herein is a pro se litigant, the undersigned has

made a thorough review of the memorandum and the supporting documents, viewing same in the light most favorable to the plaintiff, and has researched the law concerning the issues in this case.

Standard for Summary Judgment

Summary judgment is proper if, viewing the evidence in the light most favorable to the non-moving party, "the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." F.R.C.P. Rule 56(c). Once the defendants have produced a properly supported motion for summary judgment, the plaintiff cannot establish a genuine issue of material fact by resting on his pleadings. Plaintiff must produce significant evidence demonstrating the existence of a genuine fact issue. In addition, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. The requirement is that there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc. 477 U. S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Summary judgment is mandated in any case where a party fails to establish the existence of an element essential to his case and on which he bears the burden of proof at trial; a complete failure of proof on an essential element renders the other facts immaterial. Celotex Corp. v. Catrett, 477 U. S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Furthermore, a party cannot attempt to create a fact issue by making unsubstantiated assertions of fact, or by providing evidence of facts that cannot be proved at trial. (Krim v. Banctexas Ghroup, Inc., 989 F.2d 1435 (5th Cir. 1993); Geiserman v. MacDonald 893 F.2d 787 (5th Cir. 1990). Keeping these standards in mind, each of the plaintiff's claims will be addressed separately below.

First Amendment/Freedom of Speech Claim

In order for plaintiff to prevail on his First Amendment claim, he must show that his alleged damages rise to the level of a constitutional deprivation. In the absence of a constitutional deprivation, the remainder of the facts at issue herein are immaterial.

Plaintiff in this matter is a tenured professor at Louisiana Tech University. It is undisputed that he has not been fired or demoted, and that his salary has not been cut, and that he has in fact received regular cost of living salary increases. His claims of damage include denial of merit raises, summer employment, and overloads. However, as was decided in the previous case brought by this same plaintiff, and affirmed by the Fifth Circuit, plaintiff has no constitutional right to merit raises, summer employment, or overloads. Thus, looking at the case in the light most favorable to the plaintiff, there has been no constitutional deprivation, and the plaintiff cannot prevail on these claims.

In Dorsett v. Board of Trustees for State Colleges and Universities, 940 F.2d 121 (5th Cir. 1991), the plaintiff's prior suit, the court noted that "the continuing retaliatory actions alleged by Dorsett appear to be nothing more than decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures. We recognize that such decisions might seem extremely significant to Dorsett, who has devoted his life to teaching. But we believe. Nevertheless, that the alleged harms suffered by Dorsett do not rise to the level of a constitutional deprivation." Id. At 123. The claims of harm alleged by Dorsett in the present suit are virtually identical to those he brought in his prior suit. There has been no constitutional deprivation, and it is therefore recommended that his claims under the First Amendment be dismissed with prejudice.

Due Process Claim

In order to maintain his claim for a violation of his procedural due process rights, Dorsett must have been

denied some substantive property or liberty interest. The requirements of procedural due process apply only to a deprivation of interests encompassed by the Fourteenth Amendment's protection. Board of Regents v. Roth, 408 U. S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Dorsett claims that the evaluation process used for the academic year 1996-1997 and beyond did not follow the Tech handbook. Dorsett also claims that there was a "secret" personnel file used in the process of his evaluation and that he was denied assess to this file. Dorsett also claims he was denied a time grievance process and denied a hearing for the grievances filed. Finally, he claims that the defendants abandoned the criteria used for others in considering him for merit raises.

The only fundamental property right enjoyed by Dorsett as a tenured professor is his right to continued employment, which does include an expectation that his salary will not be reduced. If a fundamental property interest were at issue, due process in the form of notice and an opportunity to be heard would be required. However, Dorsett does not have a fundamental right to merit raises, summer employment, or overload assignments. Tech's alleged failure to follow procedures in the grievance process or in the evaluation process is not sufficient to give rise to a claim for a violation of Dorsett's procedural due process rights under the U. S. Constitution. Violations of Tech's procedures could possibly give rise to a state claim for breach of contract, but will not support a constitutional claim so long as the due process requirements of notice and an opportunity to be heard have been met.

Assuming arguendo, that plaintiff's interests were implicated by the negative evaluations and reprimands, the evidence produced by the defendants and by the plaintiff himself shows that his procedural due process rights were not infringed. Dorsett admits that he received copies of the letters of reprimand and of the evaluations used in denying him merit raises.

His own refusal to sign some of the evaluations does not mean that he did not have notice of them or that he did not have an opportunity to respond to them. He has produced no evidence, except his own belief, of the existence of any "secret" documents used by the administration in reaching its decisions, and the information which it claims that if did use was adequate to support its decisions.

Dorsett does not deny that the events for which he was reprimanded occurred, although he does seek to cast them in the light most favorable to himself, and he did not file grievances regarding the reprimands until he was denied a merit raise. The record in this case shows that Dorsett was fully aware of the allegations of disruptive behavior, low student evaluations, the lack of pursuit of outside grant funds, and the other factors on which the administration states that it based its decisions. The constitutional required notice and opportunity to be heard requirements were met.

In addition, a review of the record in this matter shows that Louisiana Tech in fact did substantially comply with its grievance procedures. Dorsett's complaint on this issue is apparently that he was not given a formal hearing, but neither the grievance procedures nor Fourteenth Amendment due process require a formal in-person hearing. Dorsett himself admits, at pages 22-23 of his opposition memorandum, that most grievances at Louisiana Tech are handled without a formal hearing. Dorsett has no evidence that Tech's procedures require such a hearing. He has no evidence that he has been treated differently from anyone else in this regard, and instead is complaining that the procedures themselves were unfair. The record shows that his grievances, which were in writing, were considered by the appropriate entities within the university, and that Dorsett was given an opportunity to respond in writing to the reprimands and evaluations by others. Again, due process does not require an in-person hearing.

Dorsett's own documentation filed in support of his opposition to the pending motion shows that he sent the administration numerous letters, written responses, and lengthy explanations of his position on all of the issues of which he now complains, that his responses were considered by the administration, and that he was aware of his right to file grievances and to otherwise challenge the administration's decisions. Thus, even assuming that Dorsett had a fundamental interest in anything other than continued employment, he was given both notice and the opportunity to be heard and his due process rights have not been violated. The motion for summary judgment on this issue should be granted.

Defamation of Character

Finally, Dorsett alleges that the defendants have defamed him in the negative evaluations, grievance proceedings, and letters of reprimand which have been filed against him. Dorsett claims that the individual defendants defamed him by participating in the grievance process and/or by writing the letters of reprimand. Dorsett further claims that defendant Reneau defamed him in allegedly referring to members of the AAUP as "troublemakers" in a comment to the News Stat World newspaper.

In order to establish defamation under Louisiana law, a plaintiff must prove (1) a false and defamatory statement concerning another; (2) publication to a third party; (3) fault on the part of a publisher; and (4) resulting injury. A plaintiff alleging defamation must prove defamatory words, publication, falsity, actual or implied malice, and resulting injury. McConathy v. Ungar, 33, 368 (La.App. 2 Cir. 8/23/00; 765 So.2d 1214, La.c.c. art.2315. A statement is defamatory if it is false and tends to expose a person to contempt, hatred, ridicule, or obloquy, causes a person to be shunned or avoided, has a tendency to deprive him of the benefits of public confidence, or injures him in his occupation. The test is the effect the statement is fairly calculated to produce and the impression it would

naturally engender in the minds of the average person among whom it was intended to circulate. Id. At 4, 1217.

If the plaintiff proves that a statement is defamatory, he must still prove that it was published. Under Louisiana law, a crucial element of a defamation claim is proving that the defendant made an unprivileged publication to a third party. Brunet v. Fulmer, 2000-0644 (La.App. 4 Cir. 1/10/01; 777So.2d 1240. Louisiana law is clear that "statements between employees, made within the course and scope of their employment, are not statements communicated or publicized to third persons so as to constitute a publication for defamation purposes." Bell v. Rogers, 29, 757, 10 (La.App. 2 Cir. 8/20/97); 698 So.2d 749, 756.

The Fifth Circuit, in Wheeler v. Miller, 168 F.3d 241 (5th Cir. 1999), set the standard to which the plaintiff in the present action must be held in proving his defamation claim herein, holding that the defendant university's alleged false allegations of cheating regarding the plaintiff, a graduate student who had been dismissed from the doctoral program, could not support a due process or defamation claim because the allegations did not result in stigma to the student, absent evidence that the university took any action jeopardizing the plaintiff's status as a student as a result of the allegations, that the university disclosed the stigmatizing information to third parties, or that the alleged defamatory statements were false.

The Fifth Circuit noted that defamation by the government might be actionable under the due process clause even where the government itself does not take action adverse against the plaintiff by altering the plaintiff's status as an employee or student, but where the plaintiff claims that the government's defamation has impaired his ability to pursue an occupation, the plaintiff must show that the defamatory statement was publicly disclosed. In addition, in order to support a claim that state action has resulted in a stigma that

violates the plaintiff's right to due process, the plaintiff must prove that the state actor made concrete, false assertions of wrongdoing on the plaintiff, and the charge of wrongdoing must be worse than merely adverse, it must be such as would give rise to a badge of infamy, public scorn, or the like. Finally the plaintiff must prove that the allegedly defamatory charges made against him were false. Id. At 250-251.

Turning first to the alleged defamatory statement in the News Star newspaper, the only statement which could in any way be considered to have been publicly disclosed by the defendants, Dorsett admits that Reneau did not name any names in the newspaper account, and the undersigned's review of the documentation provided fails to reveal any statement that could be construed as defamatory. (Dorsett deposition at page 266). The only documentation provided which could possibly be the referred to by the plaintiff is in a document marked "September 26, 1996, News Star World," addressing claims by Dorsett and others that the methods used to distribute funds allocated for pay increases were unfair, in which Reneau is quoted as saying he did "not intend to get into a war of words with these people. I've been through this with them for years, even to defending lawsuits." (CD97, attached to opposition brief). The statement simply declines to comment on the criticisms lodged against the university administration. In fact, the claims made by Dorsett and the others regarding unfair practices by the university, if false, could much more easily be construed as defamatory. The statement by Reneau could not reasonably or fairly be construed to expose the plaintiff to contempt, hatred, ridicule, etc., and is far from a concrete allegation of wrongdoing. In addition, there is absolutely no evidence that the statement was false, an essential element of a defamatory claim.

Dorsett further claims that defendant Ruth Ellen Hanna defamed him, implying that he was a "liar"

simply by denying that she had placed mail in his Louisiana Tech mailbox without his permission. Her denial of the action could just as easily be interpreted to mean that she believed he was mistaken as to mean that he was deliberately lying about the occurrence. The statement is certainly not a concrete allegation of wrongdoing. Dorsett has pointed to no jurisprudence supporting his claim that such a statement was defamatory, and, even if it were, there is no evidence that the statement was published to third parties outside the university. (Dorsett deposition at page 321).

As for the reprimands and evaluations, Dorsett has produced no evidence that the reprimands or evaluations were published to third parties. Dorsett admits that he is unaware of any publication of the alleged defamatory remarks, other than the newspaper article as addressed above, which contains nothing defamatory at all. In addition Dorsett has admitted that the incidents referenced in the reprimands occurred, and has failed to produce evidence that any of the statements were false. Dorsett's memorandum appears more as seeking to justify his behavior and his actions instead of denying them, and to challenge the validity of the department's use of teacher evaluations and grant writing criteria in evaluating his performance rather than presenting evidence that they were falsified. In the absence of evidence or falsity, the statements in question cannot support a claim for deformation. It is therefore recommended that his claims on this issue be **DISMISSED** with prejudice as well.

Under the provisions of 28 U.S.C. section 636(b)(1)(c) and F.R.C.P. Rule 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another part's objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for

extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Monroe, Louisiana, this 4th day of September, 2001.

"s Karen L. Hayes"
Karen L. Hayes
United States Magistrate Judge

COPY SENT:
DATE: 9-6-01
By: SEM
TO: Dorsett Henry

COPY SENT:
Date: 9-5-01
By: DD
TO: RGJ a JC

Supreme Court, U.S.
FILED
JUL 3 2002

No. 01-1788

IN THE

Supreme Court of the United States

CHARLES DORSETT,

Petitioner,

v.

LOUISIANA TECH UNIVERSITY, RICHARD GREECHIE, BARRY KURTZ, BARRY BENEDICT, KENNETH REA, DANIEL RENEAU, LESLIE GUICE, EUGENE CALLENS, and RUTH ELLEN HANNA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Respondents submit that the issues for review are as follows:

1. Whether the Court of Appeals correctly affirmed the lower court's grant of respondents' motion for summary judgment.

2. Whether the Court of Appeals correctly determined that: (a) petitioner's First Amendment rights were not violated when he was denied merit raises, summer employment and assignment of overloads; (b) respondents did not defame plaintiff; and (c) respondents did not violate plaintiff's due process rights.

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INTRODUCTION

The Petitioner's Brief contains the same arguments as his Fifth Circuit brief and opposition to Respondents' Motion for Summary Judgment. His brief contains no arguments of law that would warrant a reversal of the rulings of the lower courts; thus, there is no compelling reason for this court to grant petitioner's writ. Petitioner, as pointed out in the rulings by both lower courts, (*see* Report and Recommendation rendered September 4, 2001, Appendix C[1] at 6 and Appeal Ruling filed February 28, 2002, Appendix A at 2) raises his misconception of Respondents' misconduct without submitting supporting documentation or evidence other than his one-sided allegations. Petitioner's arguments are filled with allegations, misunderstandings and misstatements of fact, most of which have no bearing on the underlying ruling of the courts. The lower courts have rejected petitioner's arguments as devoid of any law that could justify finding in petitioner's favor. The rulings of the lower courts are correct and therefore this writ should be denied.

STATEMENT OF THE CASE

Plaintiff, Charles Dorsett, is a longtime employee of Louisiana Tech University ("Tech"), having been tenured on September 1, 1984. In 1990, he was promoted from Associate Professor to Professor of Mathematics and Statistics; he remains in that position today. Due to letters of reprimands and/or Dr. Dorsett's poor overall performance evaluations, he did not receive merit raises for the academic years 1996-1997, 1998-1999 and 1999-2000. Further, due to his lack of merit raises and other perceived injustices, Dr. Dorsett filed

1. All references by Respondents in their Opposition Brief will be to those contained in the Petitioner's Appendix.

several grievances within Tech's grievance procedures. Furthermore, Dr. Dorsett claims that he was denied overload assignments. Yet, he has never had overload assignments while employed at Tech. Lastly, Dorsett claims he was denied summer employment. It is not disputed that the only "deprivations" suffered by Dr. Dorsett are the lack of merit raises, lack of summer employment and lack of overload assignments.

This is the second suit filed by Dr. Dorsett against Tech. His previous case was likewise dismissed in the summary judgment stage and affirmed by the Fifth Circuit.[2] There, Dorsett alleged that respondents harassed him in retaliation for his exercise of free speech rights pursuant to the First Amendment. This case, like his previous case, should be dismissed. In his arguments, Dr. Dorsett fails to address the relevant legal issues, and instead makes unsubstantiated allegations against the respondents. Dr. Dorsett submitted no affidavits or deposition testimony to support his many allegations. There is only his unilateral account of events.

With regard to his many grievances, respondents do not dispute that he was not given a formal hearing in his grievances. However, he was given an opportunity to respond at every level of the process. Additionally, Tech followed its own procedures for the grievance process, although Dr. Dorsett claims otherwise.

Lastly, with regard to Dr. Dorsett's defamation claim, he claims that he was defamed with negative evaluations, letters of reprimand and responses to his grievances. He also alleges that Reneau defamed him when stating that AAUP

2. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

members were "troublemakers" in a statement given to the NewsStar newspaper. The argument below will show that plaintiff did not meet his burden of proving defamation under Louisiana law.

Thus, based on the above allegations, Dr. Charles Dorsett filed this action on February 3, 1998 claiming due process violations and defamation. On July 2, 1999, Dr. Dorsett amended his complaint adding First Amendment violations and adding additional Fourth and Fifteenth Amendment due process violations. Lastly, on September 22, 2000, Dr. Dorsett amended his complaint again adding additional alleged violations. In short, Dr. Dorsett alleges that Tech and the respondents took certain adverse actions against him for his speaking out on matters of public concern against Tech and its President, Reneau.

Respondents filed a timely[3] Motion for Summary Judgment on July 9, 2001 arguing that: (1) the alleged damages suffered by Dr. Dorsett (i.e., lack of merit raises, summer employment or overload assignments) did not rise to the level of constitutional deprivation; (2) even if they did rise to the level of constitutional deprivation, Dr. Dorsett was not speaking out on matters of public concern; (3) at all times, Dr. Dorsett was speaking out as an employee, not a private citizen; (4) Dr. Dorsett was not defamed; and (5) defendant did not violate Dr. Dorsett's Fourth or Fifteenth Amendment due process rights.

3. Respondents filed their Motion for Summary Judgment on July 9, 2001, the day all dispositive motions were due. Although the letter to the clerk for filing was addressed to the Shreveport office, the motion was properly filed in the Monroe Federal Clerk's office, all of which is adequately reflected in the court's records. This is further evident in Volume 1 in the Record on Appeal. The Docket shows that on July 9, 2001, the court received the Motion, although not technically "filed" until the Court ruled on the Motion to Exceed the page limits.

The Magistrate Judge issued a Report and Recommendation on September 4, 2001 recommending that the motion be granted, correctly holding that Dr. Dorsett had not suffered a constitutional deprivation, had not been defamed and was not denied due process. (*See* Report and Recommendations, Appendix C) Judgment was subsequently rendered on September 25, 2001 after a *de novo* review of the record, dismissing Dr. Dorsett's suit. (*See* Judgment, Appendix B) Thereafter, Dr. Dorsett appealed to the Fifth Circuit Court of Appeals. That court affirmed the District Court's ruling on February 28, 2002. (*See* Appeal Ruling, Appendeix C) The following argument will show that the granting of summary judgment was proper, and that this Court should deny the request for writ of certiorari.

SUMMARY OF THE ARGUMENT

1. Dr. Dorsett suffered no constitutional deprivation by being denied merit raises, summer employment and overload assignments. Therefore, the lower courts were correct in not considering the issue of whether or not he was speaking on issues of public concern.

2. Dr. Dorsett was not deprived of due process for lack of a grievance hearing. He had ample opportunity to be heard in the grievance process. No actual hearing is required in order for the defendant to comply with due process requirements.

3. There was no defamation against Dr. Dorsett.

ARGUMENT

Rule 10 of the Supreme Court Rules is very clear when stating that a "petition for a writ of certiorari will be granted only for compelling reasons." There is simply no compelling reason for this court to review this matter.

I. Standard of Review

The standard of review in the granting of summary judgments is the same standard used by the district court. "To support summary judgment, the evidence, including affidavits, depositions, answers to interrogatories, and admissions on files, must demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Under this standard, we consider the evidence in the light most favorable to the party resisting the motion. We review questions of law *de novo*."[4]

Once the respondents supported their motion for summary judgment sufficiently, Dr. Dorsett must have established a genuine issue of material fact. This cannot be accomplished by resting on his pleadings alone.[5] Further, he will not establish a genuine issue of fact by asserting unsubstantiated allegations of fact or providing fact that he can not prove at trial.[6] The following will clearly show this court that Dr. Dorsett could not prevail at trial.

4. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121, 123 (5th Cir. 1991), citations omitted; Fed. R. Civ. P. 56(c).

5. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

6. *Krim v. Banctexas Group, Inc.*, 989 F.2d 1435 (5th Cir. 1993); *Geiserman v. MacDonald*, 893 F.2d 787 (5th Cir. 1990).

II. Dr. Dorsett's First Amendment Constitutional Rights Were Not Violated

In order for Dorsett to succeed on his First Amendment violation claim, he must first prove that the alleged harm he suffered rises to the level of a Constitutional deprivation.[7] It does not. The Fifth Circuit court held in Dorsett's previous suit that administrative matters such as teaching assignments and pay increases did not rise to the level of a constitutional deprivation.[8] Therein, the Fifth Circuit court stated:

> We have neither the competency nor the resources to undertake to micromanage the administration of thousands of state educational institutions. Of all fields that the federal courts should hesitate to invade and take over, education and faculty appointments at [the university] level are probably the least suited for federal court supervision.[9]

As previously stated, Dr. Dorsett still enjoys his position at Tech, not having been fired or demoted. He has been "denied" raises, summer employment and overloads. However, Dorsett has no constitutional right to raises, summer employment or overloads; thus, there have been no constitutional deprivations.[10]

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7. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

8. *Id.*

9. *Id.* at 124.

10. *Supra* at note 7.

The Fifth Circuit decided this very issue in Dorsett's previous suit where he claimed that he was unfairly denied summer employment and raises. That court stated:

> The continuing retaliatory actions alleged by Dorsett appear to be nothing more than decisions concerning teaching assignments, pay increases, administrative matters and departmental procedures. We recognize that such decisions might seem extremely significant to Dorsett, who has devoted his life to teaching. But we believe, nevertheless, that the alleged harms suffered by Dorsett do not rise to the level of a constitutional deprivation.[11]

The same is true here; there has been no constitutional deprivation. Dr. Dorsett is confused as to what constitutes a "constitutional deprivation." He may have a property right in his employment, but he has no property right in raises, summer employment, positive evaluations or overload assignments.

Since Dr. Dorsett has failed to meet his first burden of proving a constitutional deprivation, we do not even reach the question of whether he was speaking out on matters of public concern as a private citizen or as an employee. However, the "public concern" issue is what Dorsett's writ application seems to focus. Even if the court would have determined that Dorsett did suffer a constitutional deprivation, a review of his Briefs and opposition to the Motion for Summary Judgment shows that the matters of concern are motivated by a bitter employee who did not receive a pay raise.

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11. *Id.* at 123.

Additionally, Dorsett would have to show that the protected speech was a substantial or motivating factor in the adverse employment decision.[12] However, due to the many letters of reprimand and poor overall performance, the respondents would have reached the same decision absent the alleged protected conduct. Thus, Dr. Dorsett's First Amendment claim fails.

III. Dr. Dorsett Was Not Denied Due Process Under The Fifth or Fourteenth Amendments

Dr. Dorsett has several due process claims. He claims that the evaluation process used did not follow the Tech Handbook; that a "secret" personnel file was denied him and then used in his evaluation; that he was denied a timely grievance process and formal hearing; and that respondents abandoned their criteria for determining his merit raise.

Dr. Dorsett, as a tenured professor, enjoys one fundamental property right, and that is continued employment.[13] If this fundamental right was to be taken away, he would have to be afforded notice and the opportunity to be heard. However, this is not at issue. As stated, Dr. Dorsett enjoys his same position, not having been demoted or decreased in salary. Dr. Dorsett does not have a property right to raises, summer employment or overload assignments.[14] Furthermore, he does not have a due process claim for Tech's alleged failure to follow their own Handbook in giving raises or evaluating him.

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12. *O'Connor v. Steeves*, 994 F.2d 905, 912 (1st Cir. 1993).

13. U.S.C.A. Const. Amend. 14; *de Llano v. Berglund*, 142 F. Supp. 2d 1165 (D.N.D. Mar 19, 2001).

14. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

Furthermore, Dorsett's claim that he was denied due process in his grievances fails. He had all opportunities to be heard in the grievance process, with opportunities to respond to all allegations. Additionally, Dorsett admits to receiving copies of all letters of reprimands and evaluations, thus he had an opportunity to respond. The denial of a formal hearing within the grievance process is not a constitutional violation of due process. It is only essential that he has an opportunity to present his side of the story.[15] Dorsett was afforded this and was not denied due process.

IV. Dr. Dorsett Was Not Defamed

Dr. Dorsett claims that he was defamed in the letters of reprimand and negative evaluation, by defendant Reneau who allegedly defamed him in a NewsStar article, and by defendant Hanna who implied he was a liar. In order to prove defamation, Dr. Dorsett must prove: (1) a false and defamatory statement; (2) published to a third party; (3) fault (actual or implied malice) on the part of the publisher; and (4) resulting injury.[16] Dr. Dorsett has failed to prove these elements.

He has failed to prove publication for the allegations of defamation resulting from the letters of reprimand or negative evaluations. Louisiana law is clear that "statements between employees, made within the course and scope of their employment, are not statements communicated or publicized to third persons so as to constitute a publication for defamation

15. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985).

16. *McConathy v. Ungar*, 33,368 (La. App. 2 Cir. 8/23/00); 765 So. 2d 1214, La. C.C. Art. 2315.

purposes."[17] Further, an employer will have a qualified or conditional privilege where statements are made in good faith and reasonably thought to be true on a subject matter in which the employer has an interest.[18] Certainly, Tech, as the employer of Dorsett, has interest in all employment matters, including reprimands and grievances. Herein, all of the actions alleged to have defamed Dorsett (i.e., the letters of reprimand and the grievance responses) were based on matters of interest to the employer and made in good faith. Additionally, these letters and evaluations were placed in Dorsett's file; there was no publication. Lastly, he has not proved falsity of the statements.

With regard to the alleged defamatory comments by Reneau to the NewsStar, Dorsett admits that Reneau did not name any names. A review of the only documentation provided by Dr. Dorsett to prove this allegation is a September 26, 1996 article wherein Dorsett and others accuse Reneau of misallocation of funds for raises. The NewsStar quoted Reneau as saying that he did "not intend to get into a war of words with these people. I've been through this with them for years, even to defending lawsuits." This statement in no way can be construed as defamation of Dorsett. Reneau simply declined to comment. No other article has ever been produced by Dorsett.

Lastly, Dorsett claims that the defendant, Hanna defamed him by implying he was a liar when she denied placing mail in his mailbox without his permission. Such a statement can

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17. *Bell v. Rogers*, 29,757, 10 (La. App. 2 Cir. 8/20/97), 698 So. 2d 749, 756.

18. *Heinz v. Arkansas Louisiana Gas Company*, 613 So. 2d 646 (2d Cir. 1993), *cert. denied*, May 14, 1993.

not be construed as defamation no matter how far stretched. She simply denied an action. Furthermore, even if she called him a liar, there is no evidence of publication. Thus, all the alleged statements of defamation cannot support Dr. Dorsett's claim since there is no proof of publication or falsity.

CONCLUSION

For the forgoing reasons, the United States Fifth Circuit Court of Appeals correctly affirmed the district court's granting of respondents' motion for summary judgment. Accordingly, the petitioner's writ should be denied.

Respectfully submitted,

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IN THE

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CHARLES DORSETT

Petitioner,

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LOUISIANA TECH UNIVERSITY, RICHARD GREECHIE, BARRY KURTZ, BARRY BENEDICT, KENNETH REA AND DANIEL RENEAU, LESLIE GUICE, EUGENE CALLENS, AND RUTH ELLEN HANNA, in their individual and official capacities

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF OF RESPONDENTS

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REPLY BRIEF

Within the defendants' BRIEF IN OPPOSITION, the defendants could not exhibit, in any manner, a rebuttal to plaintiff's argument that Magistrate Judge Hayes' Ruling concerning plaintiff's FIRST AMENDMENT rights, which was supported by both the District Judge and the Fifth Circuit Court Of Appeals, was equivalent to the statement that a governmental employee in the area of education has no protection from the First Amendment of the United States Constitution. Thus, plaintiff's argument that Magistrate Judge Hayes' ruling is equivalent to the statement that a governmental employee in the area of education has no protection from the First Amendment of the United States Constitution is uncontested by the defendants in this case. In addition, as documented within the defendants' Memorandum In Support Of Motion For Summary Judgment, the defendants did not agree with Magistrate Judge Hayes', the District Judge's, and the Fifth Circuit Court of Appeals' ruling, which, according to 42 USC section 1983, vetoed the First Amendment of the United States Constitution. Within section B., paragraph one, page 11 of the Memorandum In Support Of Motion For Summary Judgment, the defendants' state:

> "For plaintiff to establish a prima facie case of First Amendment retaliation, he must establish that the speech could be "fairly characterized as involving matters of public concern," and that the speech was "at least a "substantial" or "motivating" factor" in the adverse action taken by the employer."

Thus the defendants like the plaintiff believe that the ruling by Magistrate Judge Hayes and supported by both the District Judge and the Fifth Circuit Court Of Appeals was an error in the law. Hence there is a compelling reason for granting the petition for a writ of certiorari in this case as required by Rule 10 of the Supreme Court Rules.

As documented above, the defendants recognized serious problems with Magistrate Judge Hayes' and the District Judges' ruling concerning plaintiff's First Amendment claims. However, they were confronted with the same dilemma as Magistrate Judge Hayes; the facts of the case as documented by plaintiff established plaintiff's First Amendment claims as valid claims. As a result, within the Fifth Circuit Court Of Appeals and their BRIEF IN OPPOSITION, the defendants abandoned their arguments, statement of facts, and cited legal criteria used to support their Motion For Summary Judgment concerning plaintiff's First Amendment claims. In their place, the defendants attempted to mend the serious problems within Magistrate Judge Hayes' Ruling with the never before stated, totally undocumented statement: "It is not disputed that the only "deprivations" suffered by Dr. Dorsett are the lack of merit raises, lack of summer employment and lack of overload assignments.," before using exactly the same argument as Magistrate Judge Hayes within her Ruling.

As in the defendants' BRIEF IN OPPOSITION, within the Fifth Circuit Of Appeals the defendants' stated:

> "..., Dr. Dorsett filed this action on February 3, 1998 claiming due process violations and defamation. On July 2, 1999, Dr. Dorsett amended this complaint adding First Amendment violations and adding Fourth and Fifteenth amendment due process violations. Lastly, on September 22, 2000, Dr. Dorsett amended his complaint again adding additional alleged violations."

As was established by plaintiff in the Fifth Circuit Court Of Appeals, the above statement is erroneous. As an example, plaintiff February 3, 1998 petition, as document by the petition itself, did include the First Amendment and First Amendment violation claims. However, even using their stated facts, it was plaintiff's

claim and belief that he was deprived his First Amendment rights, his due process rights, and his legal right not to be defamed. Hence, the only way the defendants' statement above could be true would be for the defendants to include within their acknowledged lack of merit raises, lack of summer employment and lack of overload assignments plaintiff's claims and beliefs that he was deprived his First Amendment rights, his due process rights, and his legal right not to be defamed. However, using the above statement as truth, the defendants presented arguments to the Fifth Circuit Court Of Appeals in which they concluded that plaintiff had not been deprived his First Amendment rights, his due process rights, or his legal right not to be defamed, which from above established their statement to be false. Thus, with the knowledge of the Fifth Circuit Court Of Appeals, the defense presented the Fifth Circuit Court Of Appeals by the defendants to defend their actions and the actions of the District Court was contradictory and, as a result, should have been rejected. However, without even a comment, the Fifth Circuit Court Of Appeals supported the defense of the defendants.

As indicated above, within the Fifth Circuit Court Of Appeals, the defendants ended their arguments with the conclusion that their above given statement is false. Thus, by their own admission, the most the defendants could truthfully say is that it is not disputed that included within the actions by the defendants against plaintiff are denial of merit raises, summer employment, and overload assignments and their argument concerning plaintiff's First Amendment claims is reduced to exactly the argument by Magistrate Judge Hayes, which by the defendants' own actions and words, as exhibited above, left them with no defense against plaintiff's First Amendment claims. Plaintiff made the Fifth Circuit Court aware of the above information, but the Fifth Circuit Court Of Appeals supported the actions of the defendants and the District Court without any comment on the matter.

What the defendants did within the Fifth Circuit Court Of Appeals they have now done within the Supreme Court Of The United States. To defend their actions and the actions of the District Court and the Fifth Circuit Court Of Appeals, the defendants have presented a totally contradictory argument, which by their own actions and words has left them with no defense against plaintiff's First Amendment claims. Thus there are additional compelling reasons for granting plaintiff's petition for a writ of certiorari.

Even though the defendants in no way rebutted plaintiff's many facts documenting that his previous suit was not a precedent for the current suit, as indicated above, the defendants continued to use plaintiff's previous suit as a precedent, which, by way of Magistrate Judge Hayes' argument concerning plaintiff's First Amendment claims, led to the following statement within the defendants' Brief In Opposition Summary OF The Argument on page 4:

> "1. Dr. Dorsett suffered no constitutional deprivation by being denied merit raises, summer employment, and overload assignments. Therefore, the lower courts were correct in not considering the issue of whether or not he was speaking on issues of public concern."

As a result the defendants in no way rebutted any of plaintiff's many claims of speech involving matters of public concern. As an example, plaintiff's claim that his speech as the private citizen budgetary editor of the Communitas was on matters of public concern was uncontested by the defendants within their Brief In Opposition. In addition, plaintiff's claim that his speech as private citizen editor of the Communitas did not adversely affect the public service for which Tech is charged was uncontested, plaintiff's claim that President Reneau acted under color of the law with his two September 25, 1995 letters to plaintiff concerning plaintiff's speech as the private citizen editor of the Communitas was uncontested, and plaintiff's claim

that President Reneau's two September 25, 1995 letters were the only justification at the vice-president level of the grievance for denying plaintiff a merit raise was uncontested. Hence, without contest by the defendants, by 42 USC section 1983, plaintiff's First Amendment rights were violated by the defendants' actions in this suit as claimed by plaintiff. The above cited, uncontested violation of plaintiff's First Amendment rights is only one of many such violations.

As above, there are other statements made by the defendants within their Brief In Opposition that are documented by Court documents to be erroneous. One such statement is the following statement concerning plaintiff's earlier arguments:

> "In his arguments, Dr. Dorsett fails to address relevant legal issues, and instead makes unsubstantiated allegations against the respondents. Dr. Dorsett submitted no affidavits or deposition testimony to support his many allegations. There is only his unilateral account of events."

As in earlier arguments concerning due process violations, in their Brief In Opposition, the defendants addressed only property rights. Thus plaintiff's claims of denial of substantive liberty rights were uncontested by the defendants. In addition, their statement concerning Cleveland Board of Education v. Loudermill is incomplete. The complete statement of the standard set in the above case is as follows:

> "A tenured employee who has a property right in his job is entitled to oral or written notice of the charges against him, an explanation of the employee's evidence, and an opportunity to present his side of the story."

In addition, the defendants ignored the standard set in Newman v. Bargin:

> "The court held that even if a university deviates from its procedures, it is not subject to a procedural due process attack so long as the

procedures the university actually followed are fair ones."

As communicated earlier to this Court by plaintiff, at the beginning of the Fall quarter 1996, the Tech engineering, chemistry, physics, and mathematics faculty were told for the first time that they had been evaluated by the engineering administration in a never before used evaluation. Later when plaintiff met with Dr. Kurtz to inquire why he received no merit raise for 1996-1997, he discovered that he had been charged of wrong doing and declared guilty by the engineering administration without even knowing he was being evaluated. Within their Brief In Opposition, the above claim was uncontested. Thus, unlike what the defendants stated in their Brief In Opposition, plaintiff was not always informed and given an opportunity to respond and the defendants' argument is based on erroneous statements.

Within the meeting Dr. Kurtz told plaintiff that a letter written by President Reneau was used to justify plaintiff's lack of a merit raise, but refused to explain or discuss in any manner the letter written by President Reneau. At every level of the administration and the grievance procedure, plaintiff was denied any explanation or discussion of the letter written by President Reneau totally denying him the opportunity to make any response concerning President Reneau's letter. Within their Brief In Opposition, the above information concerning President Reneau's letter was uncontested.

In addition, as communicated earlier to this Court, in the Fall, 1996, plaintiff documented that a secret personnel file had been maintained and used by the defendants to harm him. In their Brief In Opposition the defendants acknowledged plaintiff's claim with no contest of the claim. Thus it is uncontested by the defendants that an unfair and illegal practice was used by the defendants to harm plaintiff.

Plaintiff's claim that as a result of the

defendants' action against him in 1996-1997, he was denied his First Amendment and Louisiana open records liberty rights was also uncontested by the defendants. Thus plaintiff was denied substantive liberty rights by the defendants without being afforded process and by Llano v. Berglund, the defendants violated plaintiff's due process. The above, cited, uncontested due process violation is one of many such violations. Likewise, the defendants' statement "Dr. Dorsett was not deprived of due process for lack of a grievance hearing" given in the Summary Of The Argument in the Brief In Opposition is erroneous.

When Dr. Callens failed to respond to plaintiff's 2000 grievance within the required time period, plaintiff requested default judgment from Dean Guice. However, instead of the expected default judgment, Dean Guice abandoned the grievance procedure and established their counsel of record in this suit Craig Henry as judge over the grievance totally denying plaintiff the opportunity to be heard or to receive a decision in the grievance or the opportunity to appeal the grievance. Thus, in an unfair manner plaintiff was denied the opportunity for input or appeal. As a result of the 2000 grievance actions against plaintiff, plaintiff was denied his First Amendment liberty rights, his Louisiana open records liberty rights, his academic freedom liberty rights, and his personnel file management liberty rights. Within their Brief In Opposition, the claims above were uncontested and, by the argument above, the statement made by the defendants is erroneous.

To defend themselves against plaintiff defamation claim, in their Brief In Opposition the defendants put all their eggs in two baskets: 1. Louisiana law is clear that "statements between employees, made within the course and scope of their employment, are not statements communicated or publicized to third persons so as to constitute a publication for defamation purposes." and 2. Further, an employer will have a qualified or conditional

privilege where statements are made in good faith and reasonably thought to be true on a subject matter in which the employer has an interest. However, within this suit, the defamatory letters used to harm plaintiff that did and could exit only in a secret personnel file are not statements made within the course and scope of employment. When Dr. Greechie delivered his secret personnel file September 28, 1995 defamatory letter to plaintiff, he described the letter as a personal communication from him and within the meeting acknowledged that the charges within the letter were false. The deposition of Dr. Halliburton within this suit established that all charges within Dr. Greechie's secret personnel file May 13, 1996 defamatory letter were false. Within the grievance process, Dean Benedict determined that the charges of wrong doing by Dr. Greechie in his secret personnel file defamatory September 28, 1995 letter, his secret personnel file defamatory May 3, 1996 letter, and his secret personnel file defamatory May 13, 1996 letter were false. Thus the defendants' defense falls and plaintiff's argument establishes that the defendants within this suit defamed him.

President Reneau's two secret personnel file defamatory September 25, 1995 letters were written to plaintiff as private citizen editor of the Communitas, which was totally independent of plaintiff's Tech employment. As documented by the letters themselves, within one of the letters President Reneau harmed plaintiff by falsely claiming that the public's open records business was his own personal and private business and in the other by falsely claiming plaintiff had overused the Louisiana open records law as the private citizen budgetary editor of the Communitas. Thus, again the defendants' defense fails. In addition, there are other instances in which the defendants' defense fails.

As always in the past, within their Brief In Opposition, the Court is told by the defendants by proclamation, without even stating a standard, that

there is no genuine issue of fact within this case. Magistrate Judge Hayes did exactly the same thing within her Ruling. If there is no genuine issue of fact within this case as repeatedly proclaimed by the defendants, then either plaintiff's cited standard for a genuine issue of fact is improper or plaintiff's application of the standard is improper. However, as always true, within their Brief In Opposition both plaintiff's stated standard for a genuine issue of fact and his application of the standard are uncontested by the defendants. Thus, unlike what the defendants proclaim to be true, there is a genuine issue of fact in this suit and, by Federal Rule 56 (c), the District Court and the Fifth Circuit Court Of Appeals erred in their decisions.

Within their Brief In Opposition the defendants state:

> "However, due to the many letters of reprimand and poor overall performance, the respondents would have reached the same decision absent the alleged protected conduct."

However, such is not the truth.

As exhibited above, the only charges used by the defendants in 1996 to deny plaintiff a merit raise were the three secret personnel file, defamatory, retaliatory letters written by Dr. Greechie and the two secret personnel file, defamatory, retaliatory letters written by President Reneau. As documented by court documents and by the defendants in this case, and uncontested by the defendants in their Brief In Opposition, within plaintiff's annual evaluations from 1999-2000 to the present, to judge plaintiff a bad teacher, the defendants used nonexistent observations, nonexistent complaints by faculty and students, and invalid, deflated student-teacher evaluation numbers used in an arbitrary and capricious manner to harm plaintiff. Within plaintiff's 1999-2000 and 2000-2001 annual evaluations, in addition to the charges above, the defendants added the grade distribution of only one of plaintiff's many

classes. For both years plaintiff was the only mathematics and statistics faculty member for whom grade distributions were used in the annual evaluation and for both years the defendants used the grade distributions in an arbitrary and capricious manner to harm plaintiff.

From 1999-2000 to the present, to judge plaintiff's badly under research, the defendants, in an arbitrary and capricious manner to harm plaintiff, used an action which by Tech's Handbook is an antithesis of academic freedom.

Almost all of the letters of reprimand, which did not begin until the Fall, 1998, concerned the nepotism and ethics violations with the employment of Dr. Hanna's daughter within mathematics and the administrative role played by Dr. Hanna within mathematics and statistics. As documented by court documents, including annual evaluations, and uncontested by the defendants in their Brief In Opposition, Dr. Hanna is manager of Tech's undergraduate mathematics and statistics program serving as administrative contact person for mathematics and statistics and is the only mathematics and statistics faculty member charged with scheduling. As a result, the many letters of reprimand concerning the nepotism and ethics violations with the employment of Dr. Hanna's daughter in mathematics and the administrative role played by Dr. Hanna in mathematics and statistics are based on false charges and from 1999-2000 to the present plaintiff's service within plaintiff's annual evaluations has been judged bad using only false charges. Likewise the remaining charges within the letters of reprimand are erroneous.

Thus there are many compelling reasons for granting plaintiff's petition for a writ of certiorari and plaintiff prays that this Court will end the continued brutal, illegal assault on his career and health by the defendants in this case.